

FEDERAL MARITIME COMMISSION

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SPECIAL DOCKET NO. 1692

APPLICATION OF OCEAN STAR CONTAINER  
LINE, A.G. FOR THE BENEFIT OF NAVISTAR  
INTERNATIONAL TRANSPORTATION CORP.

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ORDER OF REMAND

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The Commission has determined to review the Initial Decision of Administrative Law Judge Norman D. Kline ("Presiding Officer") issued in this proceeding on January 6, 1989.

Ocean Star Container Line, A.G. ("OSCL") an ocean carrier subject to regulation under the Shipping Act of 1984, 46 U.S.C. app. § 1701 et seq., applied pursuant to section 8(e) of that Act<sup>1</sup> for permission to refund to Navistar International Transportation Corp. a portion of the freight charges collected on a shipment of auto/truck parts transported from Chicago, Illinois to Melbourne, Australia.<sup>2</sup> The application alleges as follows:

Ocean Star Container Line made a direct quote to Navistar International Transportation Corp. for shipping Auto/Truck Parts, from Chicago, IL to

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<sup>1</sup> Section 8(e) authorizes the Commission to allow a carrier to refund or waive collection of a portion of the freight charges if there is an error in the tariff of a clerical or administrative nature, or an error due to the inadvertent failure to file a new tariff. 46 U.S.C. app. § 1707(e).

<sup>2</sup> The cargo was loaded aboard vessel at Norfolk, Virginia.

Melbourne, Australia at a rate of \$4900 per 40ft. container plus additional as shown in the tariff. (see Exhibit B-1). The following day they made a second quote of \$3875 per 40ft container plus additional and the parties agreed to this lower rate (see Exhibit B-2). Ocean Star Container Line failed to amend the rate in their tariff and when the vessel sailed the original, higher rate (see Exhibit C-1) was still in effect. The error was corrected on Nov. 28th, 1988, with the filing of the lower rate (see Exhibit C-2).

The Presiding Officer found that the failure to timely file the lower rate was the type of error for which section 8(e) provides relief and granted the application.

#### DISCUSSION

The record indicates that OSCL quoted the \$4,900 rate on November 2, 1988 (Exhibit B-1) and the \$3,875 rate on November 3, 1988 (Exhibit B-2). However, although not entirely clear, it appears that the shipment may have been picked up at Chicago on November 2, 1988, that is, a day earlier than OSCL quoted the \$3,875 rate.<sup>3</sup> In such event, the grant of a refund would run contrary to the decision in Application of Sea-Land Service, Inc. for the Benefit of Alimenta (USA), 22 F.M.C. 347 (1979), where the Commission held that:

If, . . . a shipment has already commenced before a lower rate is negotiated, the tariff rate is not only not being assessed as a result of an error, but the carrier cannot publish, post hoc, a tariff rate which would apply to that shipment . . . .

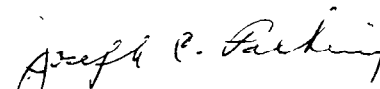
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<sup>3</sup> Attached to the application is what appears to be a copy of a bill of lading, dated November 1, 1988, directing the pick up of the shipment at Chicago on November 2, 1988.

In this instance, in order for the Commission to determine whether permission to refund a portion of the freight charges may be granted, the date OSCL took delivery of the shipment at Chicago must be established.

THEREFORE, IT IS ORDERED, That this proceeding is remanded to the Presiding Officer for obtaining additional evidence on the date on which the intermodal shipment in question began, and for the issuance of a Supplemental Initial Decision.

By the Commission.

  
Joseph C. Polking  
Secretary